

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1952 OF 1999

M/s. Subhash Gogia,
of Bombay Indian Inhabitant,
carrying on business in the
name and style of Gogia
Interiors and as a sole
Proprietor thereof Above
Plywood Godown, Atlas Mills
Compound, Opp. Reay Road Station
Bridge, Mazgaon, Bombay 400 010. ... Petitioner

Vs.

1. State of Maharashtra,
Mumbai.
2. Office of Collector,
Mumbai.
3. Gujarat Industrial Development
Corporation, a body corporate
having its office at G.I.D.C.
Guest House, Room No. 19/20,
Vapi District, Valsad as well as
Office at Khetan Bahvan, Churchgate,
Mumbai.

...Respondents

Ms. K.C. Nichani for Petitioner.

Mrs. S.S. Bhende, A.G.P. for R. Nos. 1 and 2.

Mr. C.S. Kapadia with Mr. S. Panigrahi for
Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : MAY 02, 2005

ORAL JUDGMENT (Per F.I. Rebello,J.)

. The Petitioner entered into an agreement with
respondent No. 3 dated 15.2.1985. For the
consideration of Rs.12,62,376, the Petitioner was
granted licence to use and occupy four sheds
bearing Nos. 904, 905, 918 and 919 at Gujarat

Industrial Development Corporation, Gundlav
 Industrial Estate situated at Valsad. Petitioner
 had to pay sum of Rs.3,15,594/- as earnest money
 and the balance consideration was payable in terms
 of the agreement. It is the case of the Petitioner
 that after he was put in possession, it was found
 that there was total lack of basic amenities and
 consequently he could not use the same and suffered
 losses. As a consequence, petitioner was
 constrained to surrender four sheds to Respondent
 NO. 3. The Petitioner was therefore, surprised to
 receive an order dated 5.5.1998 from Respondent NO.
 3 wherein it was alleged that a sum of
 Rs.4,48,026/- was required to be paid by the
 Petitioner towards the interest, penalty, service
 charges etc. and that the sum of Rs.3,35,594/-
 paid by the Petitioner is deducted against the said
 recovery and the remaining amount of Rs.1,12,432/-
 is to be recovered from the Petitioner. The
 Petitioner was called upon to forward demand draft
 for the said amount failing which it was to be got
 recovered as arrears of land revenue. The
 Petitioner's case is that the said demand is
 unlawful as no facilities were given for smooth
 functioning of business of the petitioner. In fact
 on account of failure by respondent No. 3 to
 provide proper amenities and facilities, the

petitioner had demanded refund of the amount and had also served legal demand notice through his lawyer. The Respondent No. 3 in making a demand has done so without following the principles of natural justice and fair play. It is then pointed out that Officer of Respondent NO. 3 addressed a letter dated 12.8.1996 to respondent NO. 2 enclosing a certificate certifying that the sum of Rs.1,12,432/- is payable by the Petitioner towards the outstanding. The Petitioner's contention is that by his letter of 1.9.1998 he requested the respondent NO. 2 to furnish proof of the alleged outstanding and further informed that he was not liable to pay the amount. It is the case of the Petitioner that the recovery officer of Respondent NO. 2 instead of producing proof, by notice dated 8.9.1998 called upon the Petitioner to produce documents relating to the subject. It is contended that the issue as contained in the letter dated 5.5.1998 is invalid as nothing is payable by the Petitioner to any of the respondents. In view of this illegal demand, the petitioner filed the petition and prayed for interim relief as set out therein. This court was pleased to issue rule on 7.1.2002.

2. At the hearing of this petition, on behalf of

the Petitioner their learned counsel made a submission that even if any amount is due and payable by the Petitioner to Respondent No. 3, the same could not have been recovered by Respondent No. 2 based on the recovery certificate issued by officer of Respondent No. 3 as only Governmental dues would be recovered and dues of Respondent No. 3 are not Governmental dues, though Respondent No. 3 may be a Corporation fully owned by the State of Gujarat. It is therefore, submitted that the demand is unlawful and consequently the petitioner is entitled to the reliefs as prayed for.

. On behalf of Respondent No. 3, their learned counsel submits that their demand is based on the provisions of Gujarat Industrial Development Act, 1962, hereinafter referred to as the Development Act, read with provisions of the Revenue Recovery Act, 1890. As the Petitioner was defaulter, it was open to Respondent No. 3 to recover the amount as arrears of land revenue under Section 41 of the Development Act and under the provisions of the Revenue Recovery Act, 1890, hereinafter referred to as "Recovery Act".

3. We have heard the learned counsel. The only contention as urged on behalf of the Petitioner may

now dealt with. The submission is that the demand made under the provisions of Development Act is not a public revenue or revenue of the Government and as such cannot be recovered under the provisions of the Recovery Act. Learned counsel has placed strong reliance on the judgement of the Single Judge of Kerala High Court in the case of Dat Pethe and another Vs. District Collector, Ernakulam and Others, AIR 1976 Kerala 37. The issue before the learned Single Judge of Kerala High Court was whether the amount sought to be recovered as arrears of land revenue based on the certificate can be said to be one due to the Government. The learned Judge held that it was only Governmental dues which can be recovered under the provisions of the Recovery Act and consequently allowed the petition. Learned counsel submits that the scheme of the Development Act has as its primary objective of the development of industries. Respondent No. 3 though a undertaking of the State of Gujarat is not a department of the State of Gujarat. In these circumstances, the amounts due and payable to respondent No. 3 could not have been recovered as arrears of land revenue under the Recovery Act even though they can be recovered as arrears of Land Revenue under the Development Act. For that purpose we may consider some of the provisions of

the Development Act. Section 28(b) sets out that the rents and damages on account of occupation of premises of Respondent No. 3 can be recovered as arrears of land revenue. Similarly, Section 41 sets out that all sums payable by any person to the Corporation or recoverable by it by or under the Act and all charges or expenses incurred in connection therewith shall, without prejudice to any other mode of recovery, be recoverable as an arrears of land revenue on the application of the Corporation. We then come to the provisions of the Recovery Act. Section 3 provides that recovery of land revenue or sum recoverable as arrears of land revenue is payable to the Collector by a defaulter being or having property in a district other than that in which the arrears accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be in terms of the Schedule. Under Section 5, if any sum is recoverable as an arrears of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrears of land revenue which had accrued in his own district, and may send a

certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

. There are no averments nor a change based on the certificate sent to respondent NO. 2 for recovery of the amount, that the officer of Respondent No. 3 who issued the certificate had no authority in law. We therefore, proceed on the footing that there is valid certificate issued to respondent No. 2 to recover the amount as set out in the certificate.

4. The only question is whether the respondent No. 2 is prohibited from recovering the amount as arrears of land revenue on account of amount not being government dues. It is no doubt true that respondent No. 3 though a statutory authority is not a department of the State of Gujarat. The issue is whether the demand of the respondent No. 3 can be recovered as arrears of land revenue in district other than district in the state of Gujarat. The contention of the learned counsel for the Petitioner is that at the highest, that may have been possible if the recovery is to be made in the same State. However, as it is not government

dues, the recovery cannot be made as arrears of land revenue in the district which is not falling in the State of Gujarat. We are afraid, we cannot subscribe to that view or for that matter the judgment of the learned Single Judge of Kerala High Court in the case of Dat Pethe (supra). The language of Section 3 and 5 of the Recovery Act makes it clear that not only arrears of land revenue can be recovered under the Recovery Act but all sums recoverable as arrears of land revenue. In other words, any amount can be recovered, as long as it is the amount which is capable of being recovered as arrears of land revenue. In the instant case, the Development Act itself permits the recovery of dues as arrears of land revenue. Once that be the case, the amount would fall under the expression "sum recoverable as arrears of land revenue". The purpose behind the Revenue Recovery Act is to enable the Collector of District wherein the property is situated to recover from the defaulter all sums of money which are capable of being recovered either as land revenue or which can be recovered as arrears of land revenue. The object behind it is that there must be public mechanism or body which can recover the amounts from a defaulter in a district where he has property considering that these are public dues.

If the contention of the Petitioners is to be accepted then the amount payable by public bodies which are recoverable as arrears of land revenue, say like in the instant case, outside the state of Gujarat, would be incapable of being so recovered. Such bodies will have to file suits where the defendant resides or where the property is or get the decree transferred for execution. This by itself would lead on many occasions to claims being time barred or a lengthy process. The aim of the Legislature was to avoid such situations and to permit recovery under the provisions of the Recovery Act which is a Central enactment, of public dues capable of being recovered as arrears of land revenue. We therefore, have no hesitation in holding that the amount recoverable under the provisions of the Recovery Act as arrears of land revenue can be recovered by Respondent No. 2 as arrears of land revenue in the State of Maharashtra.

5. Having said so, we find no merit in this petition which is accordingly dismissed. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)